



State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Commissioner

Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

Date: September 11, 2017

Time: 9AM

Place: East Building, Copper Room

MEMBERS

COMMISSION MEMBERS

xChair, Alison McCoy (*Agency, Tooele County*) xNancy Frandsen (*Insurer, Salt Lake County*)
xVice Chair, David Moore (*Agency, Salt Lake County*) xJames Swan (*Insurer, Salt Lake County*)
Sylvia Andersen (*Public Member, Salt Lake County*)

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xBrett Barratt, *Deputy Comm.* xPerri Babalis, *AG Counsel - TEC*
xSuzette Green-Wright, *MC Dir.* xRandy Overstreet, *Licensing Dir.* xReed Stringham, *AG Counsel - UID*
xAdam Martin, *Examiner* Lisa Watts Baskin, *ALJ* xSteve Gooch, *PIO Recorder*

PUBLIC

James Seaman	Carol Yamamoto	Blake Heiner
Frank Medina	Robert Williams	Glen Gooch
Wes Jensen [PHONE]	Matt Sager [PHONE]	Jeff Wiener [PHONE]
John Bartlett [PHONE]	Brandon Allen [PHONE]	Matt Ryden [PHONE]
Wade Taylor [PHONE]		

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / David Moore, Chair (9:02 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - Motion by David to adopt August 14 minutes. Seconded by Nancy. Motion passes 4-0.
 - Motion by David to adopt August 17 minutes. Seconded by James. Motion passes 4-0.
- **Reports**
 - Concur with Licensee Report / Suzette
 - There was 1 new agency, no lapsed agencies, and no reinstated agencies.
 - There were 11 new agents, a number of lapsed agents, and 4 reinstated agents.
 - Concur with Complaint & Enforcement Report / Angie
 - The investigations report used to be more than a page long. It's a lot shorter now. The last three on the first page are all lapsed licenses. On the closed cases, there was a lapsed license and a private letter of admonition.
 - David asks what types of things would result in a private letter. Adam says it's mostly advertising issues, like unapproved names and not getting a DBA approved. In this case, there were a number of things wrong, so Adam worked with them to get the problem fixed, then sent a private letter to document it. Private letters also give some history and gives the department something to show that the agency has been counseled on it.
 - Suzette notes that there are no Ecases this month.
 - Alison says she's heard that Angie is no longer with the department. Suzette says that's correct, and we should have an announcement posted tomorrow.

- **Motion by James to concur with the Licensee and Complaint & Enforcement reports. Seconded by David. Motion passes 4-0.**
- Request for Dual Licensee Expedited Request: None
- Request for Attorney Exemption:
 - Michael Anderson / Randy
 - Randy received Michael's request last week, and it include a letter and outline of his experience.
 - Michael was first licensed as an attorney since May 10, 2012. He's been licensed with the UID for title exam and title escrow since May and July 2015, respectively.
 - During 2011 and 2012, he practiced foreclosure litigation. From 2013 to 2015, he was an advisor to a county official and practiced real estate law. Since 2015, he's been independent legal counsel and title officer for a number of title agencies.
 - Randy recommends that the exemption be granted so Michael can open an agency.
 - **Motion by David to approve the attorney exemption. Seconded by Nancy. Motion passes 4-0.**
- **Administrative Proceedings Action / Lisa Watts Baskin, ALJ**
 - Stipulation and Order: None
 - Order to Show Cause: None
 - Informal Adjudicative Proceeding and Order: None
 - Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities / Perri**
- **New Business**
 - 5-year review of R592-5 / Steve
 - Steve explains that state law requires that all rules be reviewed every five years. The only action that can be taken today is deciding whether to continue the rule or repeal it.
 - Nancy has no concerns with R592-5. David says it was a good compromise when it came up a few years ago, and it has worked well. He thinks it should be continued.
 - **Motion by David to continue R592-5. Seconded by James. Motion passes 4-0.**
- **Old Business**
 - PSI test review session / Alison
 - Alison, Nancy, Randy, Carol, and Angie attended.
 - Alison said it was a really great experience. PSI walked through 25 questions with the group to determine the area they pertained to, the level of difficulty, and whether the wording was appropriate. She said they were receptive to feedback.
 - Randy notes that the questions were largely ones that a lot of people were passing or failing, to decide if they needed to be thrown out or modified.
 - Carol says she'd gone before, but this time the process made a lot more sense. She was excited to see that they were looking into some questions that were too easy and some that didn't apply.
 - Nancy liked that the person who worked with them was willing to listen and change the language as necessary.
 - Alison says prelicensing education is important and might be something for the TEC to work on. She notes that there are people who work in the industry for a few weeks and then take the test.
 - Draft bulletin re: receipt and disbursement of earnest money / Brett
 - Adam, Angie, and Brett worked on the draft. Brett's sense is that bulletins should do more than cut and paste the law. He would beef up the narrative in a subsequent draft. On the second page, he has mixed feelings about the wording of the redlined phrase "fees charged by a Title Insurance Producer for maintenance of money held may NOT be deducted from funds held." He thinks it might be useful to keep, but wonders how the industry will use the bulletin? Would producers take it to lenders or realtors, or will it be more for education so professionals don't get sideways with the law.

- Adam had questions about linking to documents from the ULTA. Alison thinks it's a good idea, and Nancy agrees.
- Nancy says part of this is best practices, and as an underwriter, it's nice to have something like this that keeps everyone on the same page.
- Alison asks if everyone should have a filed rate for holding earnest money. Brett says there's no problem with having a fee for holding money, but the law is clear that it can't be deducted from the funds held as an escrow.
- David says if it's built into the agreement that the fee must be paid to release the funds, sometimes the earnest money is the only funding they have access to. If it's an agreed-to provision of the escrow, they should have access. Reed agrees and says if you look at the statute, it says "fulfill the terms of the individual escrow" so whatever the terms say, goes. If the agreement says fees for maintenance of the escrow may be removed, that's fine. You can't arbitrarily take fees out without an agreement that supports that action.
- David suggests taking out the "However" paragraph and add "unless specifically set forth in the escrow agreement." Brett will work with the AG's office to include that idea and to make sure everyone is comfortable with the language.
- Alison agrees with David and thinks that if you're charging a rate, it should be filed with the UID. David notes that there's a statutory matrix of rates and fees that must be filed, but there are rates that everyone charges but that aren't on the matrix. He thinks they should be disclosed, but maybe shouldn't be in statute. The worst case scenario is that there would be lots of fees added during an interpleading. Brett notes that there's no escrow fee on the matrix.
- Nancy asks when someone would charge for this. She doesn't think people would start charging the fee from the outset, but if the rate is filed as a minimum fee, if the deal goes south, could they start charging at that point? Alison notes that holding earnest money costs money, and escrows can't take the money out of the earnest money, so they'll have to bill the client. If the deal falls apart, what do they do about recouping their money? David says it's almost like a cancellation fee. The problem happens when parties don't agree.
- Brett will work with the drafters to create another draft, and would like to engage with the industry. Nancy and Alison recommend that the drafters work with the ULTA. James Seaman says someone from ULTA will participate. Brett will have the second draft done before the next meeting.
- James follows up to ask what the purpose or intention is. Is it to call out a new requirement or is it more of a reminder to the industry? Brett says it's not something new from the UID's perspective — it's a restatement and clarification of the law.
- Jeff Wiener says the language uses soft terms like "encourages" and the code section notes that as long as escrow terms are agreed to, it fulfills the deal. He's not sure that a bulletin is necessary for encouragement. He doesn't see the purpose to it, and thinks the ULTA could do the same thing in a memo. Brett asks if it should say that producers are "required" to follow the law. Jeff says he doesn't think people need that reminder.
- Nancy asks if the reason for the bulletin is because people are calling the UID and are upset about earnest money. Adam says no. Brett says the reason we're doing the bulletin is because it was requested by the TEC. Alison notes that there's just enough gray area that she thinks the bulletin is helpful. David says it's more than a reminder — it's a restatement. Alison notes that the Division of Real Estate is having input on this too, so it's important to reiterate what should they should be doing.
- **Brett will present another draft next month.**
- Update on commissioner terms / Steve
 - The UID has recommended to the Governor that Randy Smart replace Sylvia as the General Public member. Randy is a local attorney who has served on another board. The UID feels like he would be a good legal voice on the TEC.
 - We don't know when Randy will be approved by the Senate, but we're hoping it will be soon.

- **Other Business**
- **Hot Topics**
 - Carol asks about holding money for improvements — can they charge a service fee for that. David says it's an escrow. When you charge a filed escrow rate, you look at the transaction and its complexity, which is why the fee varies. He thinks it would be fine.

Executive Session (None)

- **Adjourn** (9:37 AM)
 - **Motion by Nancy to adjourn. Seconded by James. Motion passes 4-0.**
- **Next Meeting: **October 2**, 2017 — Copper Room**

2017 Meeting Schedule in Copper Room

Jan 9	Feb 13 (SOB B110)	Mar 13	Apr 3	May 8	Jun 12
Jul 10	Aug 14	Sept 11	Oct 2	Nov 13	Dec 11